

TITLE 10. CALIFORNIA DEPARTMENT OF CORPORATIONS

NOTICE IS HEREBY GIVEN

The Commissioner of Corporations ("Commissioner") proposes to amend regulations under the KNOX-KEENE HEALTH CARE SERVICE PLAN ACT OF 1975 relating to hospice care.

PUBLIC COMMENTS

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8(a) of the Government Code. The request for hearing must be received by the Department of Corporations' ("Department") contact person designated below no later than 15 days prior to the close of the written comment period.

Notice is also given that any interested person may present statements or arguments relevant to the proposed action by a written communication addressed to, and received by, the Department's contact person on or before 5 p.m., June 30, 2000. If this day is a Saturday, Sunday or state holiday, the comment period will close at 5 p.m. on the next business day.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

Assembly Bill 892 (Chapter 528, Statutes 1999-Alquist) added Section 1368.2 to the Health and Safety Code. Section 1368.2 requires all health care service plan ("plan") contracts, except for specialized plan contracts, on or after January 1, 2002, to include hospice care, as a basic health care service. At a minimum, hospice care shall be equivalent to that provided by the federal Medicare program and any amendments or successor provisions. AB 892 further requires the Commissioner, by January 1, 2001, to adopt regulations to implement Section 1368.2 that are consistent with:

- (1) all material elements of the federal regulations that are not by their terms applicable only to eligible Medicare beneficiaries;
- (2) any other applicable federal or state laws; and
- (3) the definitions of Health and Safety Code Section 1746 of the California Hospice Licensure Act of 1990 (the "state Hospice Act").

Section 1300.67 describes minimum basic health care services that a plan must provide to its enrollees. The Commissioner proposes adopting subsection (h) to Section 1300.67 to include hospice care as a basic health care service.

The Commissioner proposes adopting Section 1300.68.2 to identify and consolidate the provisions of federal and state law that are applicable to the implementation of Section 1368.2.

Subsection (a) of Section 1300.68.2 defines various terms used in connection with this section.

Subparagraph (1) defines the term "bereavement services" to mean those services available to the surviving family members for a period of at least one year after the death of the enrollee and includes an assessment of the needs of the bereaved family and the development of a care plan to meet those needs.

Subparagraph (2) defines the term "hospice" to mean a specialized form of interdisciplinary health care that is designed to provide palliative care, alleviate the physical, emotional, social and spiritual discomforts of an individual during the last phases of life due to the existence of a terminal disease, to provide supportive care to the primary care giver and the family of the enrollee and which meets all of the following criteria: (1) considers the enrollee and the enrollee's family, in addition to the enrollee, as the unit of care; (2) utilizes an interdisciplinary team to assess the physical, medical, psychological, social and spiritual needs of the enrollee and the enrollee's family; (3) requires the interdisciplinary team to develop an overall plan of care and to provide coordinated care, which emphasizes supportive services, including, but not limited to, home care, pain control, and limited inpatient services which are intended to ensure both continuity of care and appropriateness of services for those enrollees who cannot be managed at home because of acute complications or the temporary absence of a capable primary care giver; (4) provides for the palliative medical treatment of pain and other symptoms associated with a terminal disease, but does not provide for efforts to cure the disease; (5) provides for bereavement services following death to assist the family to cope with the social and emotional needs associated with the death of the enrollee; (6) actively utilizes volunteers in the delivery of hospice services; and (7) to the extent appropriate based on the medical needs of the enrollee, provides services in the enrollee's home or primary place of residence.

Subparagraph (3) defines the term "home health aid services" to mean personal care services provided under a plan of treatment prescribed by the enrollee's physician and surgeon provided for the personal care of the terminally ill enrollee and the performance of related tasks in the enrollee's home in accordance with the plan of care in order to increase the level of comfort and to maintain personal hygiene and a safe, healthy environment. This provision also requires that home health aide services be provided by a person who is certified as a home health aide by the state Department of Health Services.

Subparagraph (4) defines the term "homemaker services" to mean services that assist in the maintenance of a safe and healthy environment and services to enable the enrollee to carry out the treatment plan.

Subparagraph (5) defines "interdisciplinary team" to mean the hospice care team that includes, but is not limited to, the enrollee and the enrollee's family, a physician and surgeon, a registered nurse, a social worker, a volunteer, and a spiritual caregiver.

Subparagraph (6) defines "medical direction" to mean those services provided by a licensed physician and surgeon who is charged with the responsibility of acting as a consultant to the interdisciplinary team, a consultant to the enrollee's attending physician and surgeon, as requested, with regard to pain and symptom management, and liaison with physicians and surgeons in the community.

Subparagraph (7) defines "plan of care" to mean a written plan developed by the attending physician and surgeon, the medical director or physician and surgeon designee, and the interdisciplinary team that addresses the needs of an enrollee and family admitted to the hospice program. Subparagraph (7) also provides that the hospice shall retain overall responsibility for the development and maintenance of the plan of care and quality of services delivered and also provides that nothing in this section shall be construed to limit a plan's obligations with respect to its quality assurance program as required under Section 1300.70.

Subparagraph (8) defines "skilled nursing services" to mean nursing services provided by or under the supervision of a registered nurse under a plan of care developed by the interdisciplinary team and the enrollee's physician and surgeon to an enrollee and his or her family that pertain to the palliative, support services required by an enrollee with a terminal illness. Subparagraph (8) further provides that skilled nursing services include, but are not limited to, enrollee assessment, evaluation and case management of the medical nursing needs of the enrollee, the performance of prescribed medical treatment for pain and symptom control, the provision of emotional support to both the enrollee and his or her family, and the instruction of caregivers in providing personal care to the enrollee. Additionally, this subparagraph provides that skilled nursing services shall provide for the continuity of services for the enrollee and his or her family and shall be available on a 24-hour on-call basis.

Subparagraph (9) defines "social service/counseling services" to mean those counseling and spiritual services that assist the enrollee and his or her family to minimize stresses and problems that arise from social, economic, psychological, or spiritual needs.

Subparagraph (10) defines "terminal disease" or "terminal illness" to mean a medical condition resulting in a prognosis of life of one year or less, if the disease follows its natural course.

Subparagraph (11) defines "volunteer services" to mean those services provided by trained hospice volunteers who have agreed to provide service under the direction of a hospice staff member who has been designated by the hospice to provide direction to hospice volunteers. Hospice volunteers may be used to provide support and companionship to the enrollee and his or her family during the remaining days of the enrollee's life and to the surviving family following the enrollee's death.

Subsection (b) sets forth the coverage requirements for hospice services provided pursuant to Section 1368.2 of the Act.

Subparagraph (1) sets forth licensure and/or certification requirements that are consistent with the state Hospice Act. This provision requires that plans contract with hospices that are either licensed by the state Department of Health Services or certified in accordance with federal Medicare conditions of participation.

Subparagraph (b)(2) sets forth the hospice services that plans must provide at a minimum. These services are interdisciplinary team care, skilled nursing services, home health aide and

homemaker services, social services/counseling services, medical direction, volunteer services, inpatient care arrangements, pharmaceutical, medical equipment and supplies, and certain rehabilitative therapies including physical therapy, occupational therapy and speech-language pathology services.

Subsections (c) and (d) set forth requirements from the federal regulations that are compatible with, but not as specifically articulated in the state Hospice Act. These requirements specify services that must be available on a 24-hour basis, mandate that hospice care may be provided in the home or a facility and define special coverage requirements for periods of crisis and respite care.

Subsection (e) requires that every plan shall include notice of the coverage specified in subsections (b), (c), and (d) of the plan's evidence of coverage and disclosure form.

Subsection (f) requires that all contracts between plans and hospices be in accordance with all federal and state licensure requirements.

AUTHORITY

Sections 1344, Health and Safety Code.

REFERENCE

Sections 1367 and 1368.2, Health and Safety Code.

AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulation(s). A request for a copy of any modified regulation(s) should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulation(s) for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION(S)

The express terms of the proposed action may be obtained upon request from any office of the Department. Request Document OP 06/00-B. A statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. Request Document OP 06/00-C. As required by the Administrative Procedure Act, the Office of Policy maintains the rulemaking file. The rulemaking file is available for public inspection at the Department of Corporations, Office of Policy, 980 Ninth Street, Suite 500, Sacramento, California.

ALTERNATIVES CONSIDERED

The Department must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the above action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISCAL IMPACT

- Cost or Savings to any State Agency: None.
- Direct or Indirect Costs or Savings in Federal Funding to the State: None.
- Cost to Local Agencies and School Districts Required to be Reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.
- No other nondiscretionary cost or savings are imposed on local agencies.
- Costs to Private Persons or Businesses Directly Affected: Insignificant or none.
- Effect on Housing Costs: None.

DETERMINATIONS

The Commissioner has determined that the proposed regulatory action:

- Does not affect small businesses. Health care service plans are not considered a small business under Government Code Section 11342(h)(2).
- Does not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- Does not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.
- Does not significantly affect (1) the creation or elimination of jobs within the State of California; (2) the creation of new businesses or the elimination of existing businesses within the State of California; (3) the expansion of businesses currently doing business within the State of California.

CONTACT PERSON

Comments or inquiries concerning these proposed regulation changes may be directed to SHERRIE LOWENSTEIN, Senior Corporations Counsel. Department of Corporations, 980 Ninth Street, Suite 500. Sacramento, California 95814. (916) 322-3553

Dated: April 25, 2000
Sacramento, California

WILLIAM KENEFICK
Acting Commissioner